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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,761	07/01/2003	Madonna M. Ray	P6205US	2152

30173 7590 04/16/2010

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1781	
MAIL DATE	DELIVERY MODE
04/16/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/611,761	RAY ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 January 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-16 and 18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4, 6-16 and 18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-4, 6-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the book " Breads" in view of the book " Professional Baking" and the book " Baking with Julia".

The book " Breads" teaches to form a variety of intermediate dough products having aesthetic features such as lobes, section, portions or combination thereof. The book teaches various way is which dough is cut, shaped, stamped, slit etc. to create various configuration and design such as lobe, crown etc... The book also teaches brushing the dough before baking with glaze such as melted butter glazes to soften the crusts. The book also teaches to brush the dough with butter for a velvety finish. As shown on page 28, the brush is used to brush the tops with melted butter over the exposed surface of the roll. The dough is baked at 450 degree F.

The book is silent on the BSV of the product, the use of oil, the properties of the plasticizing agent, partially baking. With respect to the method claims, the making of the dough pieces inherently includes the steps of preparing a dough and creating individual dough intermediate. The book teaches the steps of applying a plasticizing agent and providing a cutting force to create lobes, section, portion. The book does not teach partially baking, delivering the partially baked and subjecting the partially baked to final baking step. The book does not teach the mechanical cutting as in claim 15. The book also does not teach a cut extending to bout 90-98% of the thickness of the dough and refrigerating or freezing the partially finished product.

The book " Baking with Julia" teaches to make different artisan breads by different cutting or indentation. For example, in making a pain fendu, the dough is

indented and the indentation extends a substantially thickness of the dough to create two different sections. In making an epi, the dough is cut through a substantially part of the dough to create a wheat stalk appearance.

The " Professional Baking" book teaches the major functions of fats in baked items are to tenderize the product and soften the texture, to add moistness and richness, to increase keeping quality, to add flavor. The book also teaches that oil is used as a wash for some kinds of rolls. On pages 78-79, the book also teaches different cuts to the dough to create different looks to the end dough products.

The new limitation of " enhanced crown or cap volume of at least 9%" does not define over the prior art because the prior art teaches applying a coating of fat on the external surface of the dough . Thus, any inherent benefit resulting from the coating will also present in the prior art product. It would have been to vary the depth of the cut depending on the configuration wanted. All the prior art teaches that dough can be cut, indented, stamped etc. in many different ways to create different looks to the product. Some cuts can be a short, shallow slashes; other can go deeper. Thus, the degree and extend of the cut is a variable that can readily be determined by one skilled in the art depending on the appearance wanted for the product. If the cuts are present on the dough and melted fat is sprayed or brushed onto the dough, it is obvious the melted fat will go into the areas or fissures created by the cuts. The limitation of a sprayable agent in the product and spraying the agent in the method does not define over the prior art. With respect to the product, the difference between sprayable or brushing is in the processing and does not determine the patentability of the product. With respect to

the method, the book teaches the same plasticizing agent as claimed; thus, it is obvious the agent can be applied by spraying. It would have been obvious to one skilled in the art to use any means of application such as brushing, spraying, dipping ect.. because all are known techniques of applying a coating onto product. It would have been obvious to choose one over the other depending on convenience and preference. For example, if the agent is contained in a can, it would have been obvious to apply it by spraying. Since the book teaches to brush with melted butter, it is obvious the products will have the properties as claimed. The claimed use of fat to achieve such properties is well known in the art as shown by the Professional Baking book. It would have been obvious to brush the entire surface of the dough so that the whole surface will have the fat layer. This would have been readily apparent to one skilled in the art. When the surface is coated with butter, it is inherent a sealing layer is formed. It would have been obvious to use oil because oil is also a known wash for roll product as shown by the Professional Baking book. The selection of oil or butter would have been an obvious matter of preference depending on the flavor and taste desired. The BSV volume varies depending on the type of dough and the texture wanted. It would have been obvious to one skilled in the art to determine the optimum BSV for the particular dough made. This can readily be determined by one skilled in the art. It would have been obvious to partially bake the dough pieces when wanting to make a par-baked product for later consumption if the product is not intended to be used in a short time. Such product is notoriously well known in the art. It would have been obvious to deliver the product to retail store when commercial distribution is wanted. If the product is a

par-baked product, it would have been obvious to subject the product to final baking before consumption. . It would have been obvious to coat the baked dough pieces with butter or oil to enhance the taste and flavor of the product. This is notoriously well known in the art as one commonly spreads butter or oil on bread after baking. It would have been obvious to one skilled in the art to use any known means for cutting. The mechanical cutting claimed is known in the art. It would have been obvious to refrigerate or freeze the dough product when long term storage is desired. This is well known in the art and would have been readily apparent to one skilled in the art.

In the response filed 1/11/10, applicant argues none of the references contemplates or even hints at preparing a dough intermediate including a plasticizing layer, an intermediate heating step and refrigeration or freezing. It is already recognized in the rejection that the references do not teach partially baking and refrigerating or freezing. The prior art explicitly teaches adding a plasticizing layer. However, the examiner's position is that partial baking to form par-baked product and refrigerating or freezing for long term storage is notorious well known in the art. Applicant does not dispute that these features are well known in the art. Par-baked products for later finish baking to form freshly baked products are notorious well known in the art. For example, patents no. 6,248388, 6,063413, 4986992, 4788067 and 3767422 all disclose partially baked dough product for finished baking by consumer. Refrigerating or freezing for long term storage is also well known as disclosed in applicant's specification and the patents cited above. It would have been obvious to one skilled in the art to subject the dough disclosed in the cookbooks to partially baking

when desiring a partially baked product which can later be finished baking to prepare a consumable product. If a product can be baked, it can be partially baked and the selection to so would have been an obvious matter of choice depending on the type of product wanted. It would also have been obvious to freeze or refrigerate the dough product if it is not consumed in a short period of time. Applicant's comment connecting the intermediate heating to the BSV is not supported by factual evidence because applicant has shown any correlation between the partial baking and BSV. The BSV of a dough product can be affected by many factors and if the BSV is enhanced by the sealing layer, then such enhancement is inherent in the prior art product because the books teach applying a sealing layer. Applicant is using the plasticizing layer for the reason known in the art. The " Professional Baking" book teaches the major functions of fats in baked items are to tenderize the product and soften the texture, to add moistness and richness, to increase keeping quality, to add flavor. When the plasticizer is applied to the surface to the dough layer, it will form a sealing layer, will increase the fluidity of the dough and slows the dehydration because the function of fat is to add moistness and if it is applied on the surface, then it functions as sealing layer. Thus, applicant is not using the fat layer for any different reason from what is known in the art. Applicant has not submitted any showing to demonstrate that the claimed dough has improved organoleptic properties over the dough product taught in the books. Applicant comments that the references are directed to preparation of baked products by professional bakers or at-home baker while the claimed dough can be mass produced. There is nothing in the claims to differentiate between mass production and in-home or

in-bakery production. The issue of partial baking and refrigeration or freezing is addressed above.

Applicant's arguments filed 1/11/10 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 15, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1781